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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,229	10/31/2003	Bruce Friedman	039199-9545-00	1506

7590 03/26/2007
JOSEPH D. KUBORN
ANDRUS, SCEALES, STARKE & SAWALL
100 EAST WISCONSIN AVENUE, SUITE 1100
MILWAUKEE, WI 53202

EXAMINER

NATNITHADHA, NAVIN

ART UNIT	PAPER NUMBER
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3735

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	10/698,229		FRIEDMAN ET AL.	
	Examiner		Art Unit	
	Navin Natnithithadha		3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-38 is/are allowed.
- 6) ☒ Claim(s) 1-10, 16-19, 39-46, 50 and 51 is/are rejected.
- 7) ☒ Claim(s) 11-15 and 47-49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20040930</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-10, 16-19, 39-46, 50, and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Richardson et al, US 3,884,219 A ("Richardson").

Claims 1-10 and 16-19: Richardson teaches a device 20 for simultaneously acquiring a temperature and a respiration rate of a patient (see Abstract and figs. 4-6), the device 20 comprising: a probe 32, including a proximal end, distal end, a collar 74 positioned at the proximal end, and connector 64, constructed of suitable plastic, stainless steel, or the like; a temperature sensing element 85 coupled to the probe and including a thermistor/thermocouple (see col. 4, ll. 36-37); a disposable cover 52, including a plate 66 and made of polystyrene or other suitable plastic material, that can be positioned over the probe 72; a respiration sensing element 90 coupled to the disposable cover 52; a patient monitoring and data recording equipment 10.

Claims 39-46, 50, and 51: Richardson teaches the method of simultaneously acquiring a temperature and a respiration rate of a patient. Because the Applicant's method as claimed is not distinct from claims 1-10 and 16-19, these claims are rejected for the same reasons as stated above.

Allowable Subject Matter

2. Claims 20-38 are allowed.
3. Claims 11-15 and 47-49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. The following is a statement of reasons for the indication of allowable subject matter:

Claims 11-15: The prior art of record does not teach the apparatus of claim 1, including: a probe that includes a light-emitting diode LED and a photodiode, wherein the LED emits light toward the respiration sensing element, the respiration sensing element reflects the emitted light, the photodiode receives the reflected light, and the photodiode generates a signal representing the respiration rate based on the received light.

Claims 20-38: The prior art of record does not teach the device of claim 1, including the following: a probe including temperature sensing element, a transmitter, and a receiver; and a probe cover, including a respiration sensing element, wherein the transmitter sends a signal toward the respiration sensing element, the respiration sensing element reflecting the signal toward the receiver, and the receiver generating an output representing the respiration rate based on the reflected signal.

Claims 47-49: The prior art of record does not teach the method of claim 39, including the following: sending light from a light-emitting diode coupled to the probe

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toward the respiration sensing element, the respiration sensing element reflecting the light sent by the light-emitting diode; receiving the reflected light with a photodiode; and generating a signal representing the respiration rate based on the light received by the photodiode.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 6,733,464 B2, US 4,222,391 A, and US 4,036,211 A teach subject matter related to the Applicant's claims. The Examiner suggests reviewing these patents before responding to the present Office Action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Navin Natnithithadha
Patent Examiner
Art Unit 3735



NN
03/19/2007